

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAIN STREET AMERICA ASSURANCE
COMPANY,

Plaintiff,

v.

CONNOLLY CONTRACTORS, INC., and
GLENN M. WHITE BUILDERS, INC.
Defendants.

CIVIL ACTION

NO. 19-4241

MEMORANDUM

Joyner, J.

November 16, 2020

This declaratory judgment action has been brought before the Court for disposition of the Defendant's Motion to Dismiss for Lack of Jurisdiction. Defendant argues that the Court should decline to exercise our discretionary jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201. Because the factors laid out in Reifer v. Westport Ins. Corp., 751 F. 3d 129 (3d Cir. 2014) weigh against abstention, we deny the Motion to Dismiss.

Factual Background

This case arises out of a dispute over the extent of insurance coverage under policies Plaintiff Main Street America Assurance Company ("Main Street") issued to Connolly Contractors, Incorporated ("Connolly Contractors"). As alleged in Plaintiff's Amended Complaint, Defendant Glenn M. White

Builders, Incorporated ("Glenn White") was the general contractor for the Brick House Farms development in Newtown Square, Pennsylvania. Glenn White retained Connolly Stucco and Plastering, Incorporated as a subcontractor. Numerous homeowners in the Brick House Farms development now allege in state court suits that Connolly Contractors improperly installed stucco on their houses causing substantial water intrusions and other damage. Glenn White claims to be an additional insured under Connolly Contractors' policies and demands defense and indemnity coverage from Main Street. Main Street brought the instant federal declaratory judgment action against Connolly Contractors and Glenn White seeking a declaration that it has no duty to defend or indemnify under the policies. Glenn White now moves for the Court to abstain from hearing this declaratory judgment action.

Analysis

Glenn White does not argue that dismissal is required, but rather that we should exercise discretionary abstention under the Declaratory Judgment Act, 28 U.S.C. § 2201. The Third Circuit laid out factors to guide district courts' discretion on such abstention in Reifer and Kelly v. Maxum Specialty Ins. Group, 868 F.3d 274 (3d Cir. 2017). The Reifer factors support this Court retaining jurisdiction of the case. The non-exhaustive factors are:

- (1) the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy;
- (2) the convenience of the parties;
- (3) the public interest in settlement of the uncertainty of obligation;
- (4) the availability and relative convenience of other remedies;
- (5) a general policy of restraint when the same issues are pending in a state court;
- (6) avoidance of duplicative litigation;
- (7) prevention of the use of the declaratory action as a method of procedural fencing or as a means to provide another forum in a race for res judicata; and
- (8) An inherent conflict of interest between an insurer's duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion.

Reifer, 751 F.3d at 283.

Main Street argues that all eight factors weigh against abstention. We agree. First, a declaratory action from this Court would resolve the uncertainty around Main Street's contractual obligations which gave rise to the controversy. Second, although Glenn White argues that this Court is inconvenient because the Brick House Farms development is in Delaware County, the Eastern District of Pennsylvania includes Delaware County. Further, Glenn White is located in West Chester, Pennsylvania which is also within the Eastern District, while Main Street's offices are in Florida. The federal forum is not substantially more inconvenient to either party than the Delaware County Court of Common Pleas. For the third factor, there is no public interest besides "the usual interest in the

fair adjudication of legal disputes . . . which the District Court is well-equipped to address." Kelly, 868 F.3d at 288. Fourth, parties suggest no alternative remedies and state and federal courts are equally able to grant relief. See id. at 289. Importantly, under the fifth factor courts should favor restraint when there is a pending parallel state proceeding. Reifer, 751 F.3d at 144 ("the absence of pending parallel state proceedings militates significantly in favor of exercising jurisdiction, although it alone does not require such an exercise."). Contemporaneous state and federal proceedings are parallel when the issues and parties are "substantially similar." Kelly, 868 F.3d at 278. Like in Kelly, this federal action seeks a declaratory judgment on an insurer's obligation to defend and indemnify a party that is a defendant in a state action adjudicating that defendant's liability for an alleged harm. See id. In Kelly, the Third Circuit found that the parties and the issues in the two proceedings were not substantially similar and reversed the district court's decision to abstain. Here, Main Street is not a party to the state action and the questions of whether the insurance policy with Main Street covers Glenn White's potential liability and whether Glenn White is liable to the homeowners are distinct. The proceedings are not parallel and so the fifth factor weighs against abstention. The sixth factor also does not support

abstention because there is little risk of duplicative litigation. Under the seventh factor, there is no indication of procedural fencing or a race for res judicata. Although Glenn White argues that Main Street seeks procedural advantage in federal court, there is no articulated allegation of improper motive. See id. at 289. Finally, Main Street is not currently defending Glenn White and there is no conflict in it seeking this declaratory judgment. See id.

Glenn White additionally argues that we should abstain from hearing this case because it involves unsettled Pennsylvania state law. We disagree. At issue is the meaning of "occurrence" in the relevant insurance policies. According to Glenn White, the issue is unsettled in Pennsylvania, but, in fact, the issue has been routinely addressed and settled in Pennsylvania state courts. "Federal courts are, of course, perfectly capable of applying state law." Reifer, 751 F.3d at 148.

Conclusion

Because the Reifer factors weigh against this Court's abstention, we retain jurisdiction and deny the Motion to Dismiss. An Order follows.